

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LAURA POTTS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-03-0005

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the Department of Social and Health Services, 800 West Court, Pasco, Washington, on February 10, 2004.

1.2 **Appearances.** Appellant Laura Potts was present and was represented by Spencer Thal, Attorney at Law, Teamsters, Local 117. Morgan Damerow, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of suspension followed by dismissal for neglect of duty, gross misconduct, and willful violation of agency policy. Respondent alleges that Appellant reported to work after an unscheduled absence and knowingly presented a medical statement that was not in compliance with her medical verification requirement.

II. FINDINGS OF FACT

2.1 Appellant Laura Potts was a Corrections Officer and permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 21, 2003.

2.2 Appellant was hired as a Correctional Officer in October 1994 at the Coyote Ridge Corrections Center.

2.3 Respondent adopted DOC Policy 830.150, Section III, which authorizes the appointing authority to require a physician's statement and/or impose on-going medical verification from any employee who 1) has demonstrated an ongoing pattern in the use of unscheduled leave or 2) if the employee is suspected of abusing leave. The policy outlines the information to be provided on the medical certification and cautions that failure to provide the documentation may be grounds of corrective/disciplinary action. Appellant was aware of this policy and requirement.

2.4 Appellant has a long history of attendance problems dating back to 1996. Appellant's attendance problems were addressed as follows:

Evaluations:

- Numerous evaluations address Appellant's attendance problems, including performance evaluations dated October 1996, November 1997, October 1999, October 2000 and October 2001.

Corrective actions:

- An October 28, 1996, letter of reprimand for irregular attendance.
- On November 11, 1996, Appellant was placed on medical verification, which required her to provide a doctor's note after each unscheduled absence due to illness.
- On June 8, 1998, medical verification requirement was continued.

- On June 7, 1999, medical verification was again continued.
- A December 4, 2000, letter of corrective action for excessive leave which caused an undue burden on other employees who were held over for mandatory overtime.
- On April 10, 2001 and May 14, 2001, Appellant's supervisor met with Appellant to discuss her attendance. Her supervisor reviewed her leave usage and found many of her absences were occurring in conjunction with weekends or holidays. A May 14, 2001 memo confirmed the supervisory conference monthly meetings with Appellant.
- On March 11, 2002, Sergeant Christ conducted an employee attendance review with Appellant. In a memo to Appellant, Sergeant Christ informed Appellant that her pattern of attendance, which included 41.3 hours of unauthorized leave without pay between February 11, 2002 through March 10, 2002, was completely unacceptable and would not be tolerated. He warned Appellant that continued abuse of unscheduled leave would result in disciplinary action.

Formal disciplinary action:

- July 30, 1997 reduction in pay for excessive unscheduled leave
- January 14, 1998 ten-day suspension for failure to report to work.

Current allegation

2.5 By letter dated March 13, 2002, Superintendent Tom Donahue continued Appellant's medical verification requirement. Superintendent Donahue, in accordance with DOC Policy 830.150, Section III, directed Appellant to provide her direct supervisor, Sergeant Harvey Christ, with a original written statement on letterhead or official prescription pad from her provider. The physician's statement was to contain the general condition requiring medical/mental health attention; verification that Appellant was there in-person and the date of consultation; the beginning and end date and length of the necessary absence from work; any physical limitations requiring light or modified duty and expected duration; and the original signature of the physician. The notice also required Appellant to submit the verification form the first day of her return to work.

2.6 In June 2002, Appellant was absent and presented two separate medical notes to Sergeant Christ, which did not meet the medical leave verification requirements. Appellant acknowledged she understood her responsibility to comply with the medical leave verification requirement; however, she indicated her doctor believed the information requested by the institution was illegal.

1 Subsequently, Sergeant Christ presented the June 2002 notes to Colleen Scott, Human Resource
2 Consultant, and asked what to do about Appellant's non-compliance and explained Appellant's
3 reason for not complying. Ms. Scott called Appellant's physician on three occasions to ask the
4 physician what portion of medical verification was illegal and could not be provided to the
5 department. However, Appellant's physician never responded to Ms. Scott's inquiries. As a result,
6 Ms. Scott informed Appellant that she had a continued duty to comply with the medical verification
7 requirements. Ms. Scott also informed Sergeant Christ to send Appellant home in any future
8 instances where she failed to provide a physician's note with all necessary information and direct
9 her not to return to work until such notice could be provided.

10
11 2.7 On October 2, 2002, Appellant was absent from work due to illness. On October 3, she
12 returned to work and submitted a medical verification notice to her second-line supervisor, James
13 Phillips, Shift Lieutenant, that did not comply with the medical verification requirements. The note
14 did not contain the nature of her illness, the beginning and end dates of her absence from work, nor
15 did it indicate whether Appellant was under any work limitations. When Appellant handed the note
16 to Lieutenant Phillips, she told him, "Harvey might have a problem with it." Lieutenant Phillips
17 acknowledged to Appellant that he received the medical note; however, he made no assessment as
18 to the sufficiency of the note. Lieutenant Phillips subsequently provided the note to Sergeant
19 Christ.

20
21 2.8 Sergeant Christ met with Appellant on the afternoon of October 2, 2002, and directed her to
22 return home and return to work only after she obtained a medical note that met all the requirements
23 of her medical leave verification. Appellant was again absent on October 4, 2002. Appellant's
24 partial absence on October 3 and absence from work on October 4 were documented as
25 "unscheduled leave with out pay" and required the institution to find coverage for her post and
26 incur overtime costs.

1
2 2.9 On October 7, 2002, Sergeant Christ initiated an Employee Conduct Report against
3 Appellant.

4
5 2.10 On November 18, 2002, Superintendent Donahue, the appointing authority, met with
6 Appellant to discuss the charges. Appellant was present with her union representative. Appellant
7 admitted the October 2, 2002, medical statement from her doctor did not comply with the medical
8 verification requirement. Appellant also indicated she understood the medical verification
9 requirement. Appellant asserted, however, that she considered the note acceptable because her
10 supervisor accepted previous medical slips that did not comply with all medical verification
11 requirements.

12
13 2.11 Superintendent Donahue was not persuaded by Appellant's explanations during the
14 Loudermill meeting, and he concluded she provided no mitigating facts for her failure to provide a
15 doctor's note that contained all the information requested of her. In determining the level of
16 discipline, Superintendent Donahue reviewed Appellant's employment history with the department,
17 including prior corrective and disciplinary actions taken to address her attendance problems.
18 Superintendent Donahue concluded the institution had employed an appropriate program of
19 progressive discipline to impress upon Appellant the importance of improving her attendance and
20 providing the appropriate medical verification. Superintendent Donahue considered lesser forms of
21 discipline, but he concluded that termination was appropriate based on Appellant's failure to show
22 significant and long-term improvement and her deliberate noncompliance with the medical
23 verification requirement.

24
25 2.12 By letter dated January 16, 2003, Superintendent Donahue notified Appellant of her
26 suspension effective January 17, 2003 through January 31, 2003, followed by immediate dismissal

1 at the end of her shift on January 31, 2003. Superintendent Donahue charged Appellant with
2 neglect of duty, gross misconduct and willful violation of agency policy or Department of Personnel
3 rules or regulations for knowingly presenting a medical slip that did not comply with the medical
4 verification requirement, which resulted in unauthorized leave without pay on both October 3, 2002
5 and October 4, 2002 and caused the institution to incur overtime expenses.

7 **III. ARGUMENTS OF THE PARTIES**

8 3.1 Respondent argues that Appellant was on notice of her duty to provide her supervisor with
9 a medical verification note after each unscheduled absence due to illness and that the notice was to
10 contain all necessary information. Respondent asserts, however, that on October 3, 2002, Appellant
11 returned to work from an unscheduled absence and presented a medical statement that she knew did
12 not comply with the medical verification requirements. Respondent asserts that Appellant had a
13 long history of attendance issues that were repeatedly addressed by management. Respondent
14 asserts that Appellant showed improvement only temporarily. Respondent asserts that under the
15 circumstances, termination of the Appellant is appropriate.

16
17 3.2 Appellant does not dispute the October 2, 2002 note did not meet the medical verification
18 requirements, but she contends she immediately provided the institution with a note that did comply
19 with those requirements. Appellant contends the institution consistently accepted medical notes she
20 provided even when those notes did not contain all the requisite information. Therefore, she asserts
21 it was not unreasonable for her to believe the department would continue to accept similar notes.
22 Appellant also admits she had longstanding attendance problems, but she assert her attendance
23 record showed improvement by the summer of 2002, and that she had fewer incidences of
24 unscheduled absences, which resulted in the department no longer reviewing her attendance.
25 Appellant asserts the department dismissed her on a very technical reading of a medical verification
26 requirement and failed to put her on notice that future failure to comply could result in disciplinary

1 action. Appellant requests that the discipline imposed be reversed or that a less severe sanction be
2 imposed.

3 4 IV. CONCLUSIONS OF LAW

5 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

6
7 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
8 the charges upon which the action was initiated by proving by a preponderance of the credible
9 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
10 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
11 Corrections, PAB No. D82-084 (1983).

12
13 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
14 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
15 of Social & Health Services, PAB No. D86-119 (1987).

16
17 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
18 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
19 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
20 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

21
22 4.5 Willful violation of published employing agency or institution or Personnel Resources
23 Board rules or regulations is established by facts showing the existence and publication of the rules
24 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
25 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

1 4.6 Appellant was aware of the procedure that she provide medical documentation for her
2 absences due to illness and of the specific information that notice was to contain. Respondent has
3 met its burden of proving that Appellant failed to comply with the medical verification requirements
4 when she submitted a physician's statement that she fully understood did not comply with all of the
5 requirements outlined in Superintendent Donahue's March 13, 2002, notice to her. Furthermore,
6 her unauthorized absence for a partial day on October 3, 2002 and a full day on October 4, 2002,
7 caused undue hardship to the agency by requiring the use of the institution's resources in mandatory
8 overtime pay for other employees. Appellant's misconduct constitutes neglect of duty, gross
9 misconduct and willful violation of DOC Policy 830.150

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11 4.7 Although it is not appropriate to initiate discipline based on prior formal and informal
12 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
13 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
14 D93-163 (1995).

15
16 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
17 the facts and circumstances, including the seriousness and circumstances of the offenses. The
18 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
19 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
20 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

21
22 4.9 Appellant had a long history of prior corrective and disciplinary action addressing issues all
23 related to her attendance, including excessive absenteeism, her failure to report to work, failure to
24 notify the institution of her inability to be at work, and failure to follow the attendance policy and
25 the medical leave requirement. Appellant did not offer any compelling reasons for her failure to
26 fully comply with the medical leave procedure. Under the facts and circumstances of this case, we

1 conclude that Respondent has proven the dismissal was warranted. Therefore, the appeal of Laura
2 Potts should be denied.

3
4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Laura Potts is denied.

6 DATED this _____ day of _____, 2004.

7
8 WASHINGTON STATE PERSONNEL APPEALS BOARD

9
10 _____
11 Walter T. Hubbard, Chair

12 _____
13 Gerald L. Morgen, Vice Chair

14 _____
15 Busse Nutley, Member